MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — ORAL SALE OF MORTGAGOR'S INTEREST IN ABSOLUTE DEED TO MORTGAGEE. — Land was conveyed by absolute deed to the defendant as security for a debt. Subsequently the grantor orally released all his interest in the land for a good consideration. The grantor having become bankrupt, his trustee asserted an interest in the land. *Held*, that the defendant has the absolute title. *Hutchison* v. *Page*, 92 N. E. 571 (Ill.).

Where an absolute deed is given to secure a debt, the grantor may always show, in spite of the Statute of Frauds, that a mortgage was intended, as equity will disregard the statute rather than allow the unjust result of a different rule. *Carr* v. *Carr*, 52 N. Y. 251. However, equity should only give this assistance, if on all the facts it is fair to do so, and when the plaintiff has sold his interest to the defendant for a fair consideration, the technical defense of no writing should not be allowed. *Shaw* v. *Walbridge*, 33 Oh. St. 1. Accordingly, when the mortgagee has legal title, the decided weight of authority allows no interference by equity with the absolute deed. *Cramer* v. *Wilson*, 202 Ill. 83; *Bazemore* v. *Mullins*, 52 Ark. 207. *Contra*, *Van Keuren* v. *McLaughlin*, 19 N. J. Eq. 187. Where the mortgagee has only a lien, even though his deed is absolute on its face, it is argued that to enforce this parol agreement is to put title into the mortgagee without a writing. *Odell* v. *Montross*, 68 N. Y. 499. But the mortgagor has title only by reason of the interference of equity with the plain words of the deed, so here, too, equity should refuse its assistance if it would be unfair to grant it. *Ferguson* v. *Boyd*, 169 Ind. 537.

OFFER AND ACCEPTANCE — BILATERAL CONTRACTS — MISTAKE IN TRANSMISSION OF OFFER BY TELEGRAPH. — The defendant company, in transmitting an offer of sale from the plaintiff to a third party, negligently altered the message so as to quote a lower figure. The offeree accepted, and the plaintiff parted with the goods at the reduced price. *Held*, that the plaintiff was not bound by the acceptance of the offer as received. *Strong* v. *Western Union Telegraph Co.*, 109 Pac. 910 (Idaho).

In the majority of cases, the liability of the sender to abide by the message as received has been argued as dependent solely upon whether or not the telegraph company is his agent. This question the American courts have generally answered in the affirmative. *Western Union Telegraph Co.* v. *Shotter*, 71 Ga. 760; *Durkee* v. *Vermont Central R. R.*, 29 Vt. 127. A contrary doctrine is upheld by the English and some American decisions; in consequence of which they fail to find the mutual assent necessary to make a binding agreement. *Henkel* v. *Pape*, L. R. 6 Exch. 7; *Pepper* v. *Western Union Telegraph Co.*, 87 Tenn. 554. That the relation is not one of agency must be conceded, in view of the well-settled distinction between an agent and an independent contractor. *Lawrence* v. *Shipman*, 39 Conn. 586. See GRAY, COMMUNICATION BY TELEGRAPH, § 106. However, it seems that a meeting of minds sufficient to create a binding contract can be found without resorting to a doctrine of agency, for the "intent" of two contracting parties is to be ascertained from a reasonable interpretation of their expressions, not from their secret intention. *Harris* v. *Amoskeag Lumber Co.*, 97 Ga. 465; *Smith* v. *Hughes*, L. R. 6 Q. B. 597. So where the offerer has chosen to express himself through the medium of the telegraph, he will be bound by such expressed intent. *Ayer* v. *Western Union Telegraph Co.*, 79 Me. 493. But if the mistake is apparent, the sender will not be bound. *German Fruit Co.* v. *Western Union Telegraph Co.*, 137 Cal. 598.

RESTRAINT OF TRADE — MONOPOLY — CONTRACTS TO SELL AT FIXED PRICE. — The plaintiff manufactured medicinal tablets under a secret process, not patented. He sold the tablets only under an extensive system of contracts with wholesale and retail druggists, by which the former agreed to sell the

tablets only to designated retailers, who in turn bound themselves to maintain the prices fixed by the plaintiff. *Held*, that the system of contracts is void at common law as in restraint of trade. *W. H. Hill Co.* v. *Gray & Worcester*, 127 N. W. 803 (Mich.).

The seller's right to fix the price at which the goods may be resold by the buyer, if a single transaction appears, is undoubted. *Garst* v. *Harris*, 177 Mass. 72. The seller should have the same right, as an incident to his property in the goods, when he sells to many buyers. That these buyers must all sell the goods at the same price is not an undue restraint of trade. *Dr. Miles Medical Co.* v. *Platt*, 142 Fed. 606; *Park & Sons Co.* v. *National Wholesale Druggists' Ass'n*, 175 N. Y. 1. *Contra*, *Park & Sons Co.* v. *Hartman*, 153 Fed. 24. The contracts cannot be illegal as tending toward monopoly, for before the contracts are made the seller necessarily has a monopoly over his own goods. He gains no greater control over the market than he already had. *Dr. Miles Medical Co.* v. *Jaynes Drug Co.*, 149 Fed. 838. A combination to injure a merchant by preventing him from obtaining goods is unlawful. *Delz* v. *Winfree*, 80 Tex. 400. Also, two competitors may not enter into an agreement to keep up the price. *More* v. *Bennett*, 140 Ill. 69. But the present case presents neither of these vicious elements. To uphold the contracts would simply allow freedom of trade to the manufacturer to do what he will with his own. *Elliman* v. *Carrington*, [1901] 2 Ch. 275.

RESTRAINTS ON ALIENATION — VALIDITY OF RESTRAINT ON ALIENATION OF FEE WHEN QUALIFIED AS TO TIME. — A conveyed land in fee to B, his son, reserving to himself an interest for life in the rents and profits, and with a condition that B should not sell during A's life. *Held*, that the condition is valid. *Fraszier* v. *Combs*, 130 S. W. 812 (Ky.).

A complete prohibition against the alienation of a vested legal estate in fee is void. See GRAY, RESTRAINTS ON THE ALIENATION OF PROPERTY, §§ 13–26, 105, 113. By the weight of authority a condition or direction to this effect is void, although the suspension of the power of alienation is for a limited time. *Potter* v. *Couch*, 141 U. S. 296, 315; *Mandlebaum* v. *McDonell*, 29 Mich. 78; *In re Rosher*, 26 Ch. D. 801. But a doctrine which seems to have had its origin in unconsidered *dicta*, that a restraint for a reasonable length of time is valid, has become firmly established in Kentucky and Ontario. *Stewart* v. *Brady*, 3 Bush (Ky.) 623; *Lawson* v. *Lightfoot*, 27 Ky. L. Rep. 217; *Earls* v. *McAlpine*, 27 Grant Ch. (Ont.) 161. By statute in Kentucky, the rule against perpetuities applies to conditions and directions restraining alienation. STATS. KY., 1909, § 2055. The doctrine can therefore have no disastrous results in that state, and in order to avoid litigation as to the reasonableness of any particular restraint, the courts might well go to the extent of holding that all restraints which do not violate the rule are good. See *Johnson's Trusts* v. *Johnson*, 25 Ky. L. Rep. 2119; *Morton's Guardian* v. *Morton*, 120 Ky. 251. It has recently been held, however, in a decision disapproving of the doctrine to which the courts of the state are committed, that a restraint for the life of the devisee is unreasonable. *Harkness* v. *Lisle*, 117 S. W. 264 (Ky.).

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY OF REMEDY. — In a contract of employment with the plaintiff company, the defendant covenanted not to compete with the plaintiff company during the term of employment or for seven years thereafter. During the term of employment, an order was made to wind up the company, and the defendant was given notice that his services would not be required further and that his salary would be discontinued. The defendant began to compete with the company, who sought to enjoin him. *Held*, that he cannot be enjoined. *Measures Bros., Ltd.* v. *Measures*, [1910] 2 Ch. 248.

A sufficient basis for refusing the injunction (whether the covenant not to